

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5352 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

PURSHOTTAMDAS PURANSHANKAR UPADHYAYA

VERSUS

MALPUR DISTRICT PANCHAYAT

Appearance:

MR JR NANAVATY for the Petitioner

None present for the Respondent

Coram: S.K. Keshote,J

Date of decision: 17/02/1998

C.A.V. JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third

round, but none put appearance on behalf of the respondent. Heard the learned counsel for the petitioner and perused the Special Civil Application. The learned counsel for the petitioner contended that this matter is squarely covered by two decisions of this Court viz., (i) Special Civil Application No.4226 of 1984 dated 4.2.85, and (ii) Special Civil Application No.975 of 1993 dated 24.6.94.

#. The facts of the case are as under:

The petitioner was appointed as a Peon on 28th August 1951 by respondent-Gram Panchayat. Vide Resolution No.33 dated 26th June 1955, the petitioner was resolved to be promoted to the post of Naka Karkun in the pay scale of Rs.20-40. Then comes the Resolution No.79 of the respondent dated 8th December 1967, under which the petitioner was confirmed on the post of Naka Karkun. Under the same Resolution, it has been further resolved that having regard to the long service of the petitioner, Bombay Civil Service Rules will be made applicable to the petitioner. The petitioner was given Dearness Allowance under the order dated 12th July 1971. He was given all benefits of salary etc. in accordance with Government rules. Under the order dated 16th September 1974, the petitioner's salary was fixed in the pay scale of Rs.110-3-140. Vide Resolution No.147 dated 29th January 1976, the respondent resolved that the petitioner should be given all benefits of Desai Pay Commission from 1.1.73 in accordance with the Government rules. Under the Resolution No.150 dated 29th February 1980, the respondent has given higher increment to the petitioner in the pay scale of Rs.260-6-308 and his pay was fixed at Rs.270/- from 1.3.84, and Dearness Allowance and other benefits according to the Government rules were given. So the petitioner, on 31st May 1986, was getting Rs.308/- as basic pay and including Dearness Allowance of Rs.376/- and other benefits of interim relief etc., the total emoluments which the petitioner was getting on that date were Rs.984.30 p.m. The petitioner retired from the services on 31st May 1986 on attaining the age of superannuation. The respondent, vide its Resolution No.107 dated 28th October 1985 resolved to give gratuity to the petitioner in accordance with rules. However, the petitioner was not given pension. He made a representation from time to time to the respondent and the matter has also been referred to the District Development Officer, Sabarkantha at Himmatnagar, but that officer has informed the respondent that it should act in accordance with rules in the matter of gratuity of the petitioner. When nothing has been done in the matter, the petitioner has approached to this Court and he prayed

for directing the respondent to give him pension with effect from 1st June 1986 in accordance with law, together with interest thereon.

#. The respondent-Gram Panchayat has not contested this Special Civil Application either by filing reply to the same or by putting appearance through advocate. So in absence of any reply in the matter, the facts stated by the petitioner are taken to be correct.

#. I have gone through the two judgments of this Court, reliance on which has been placed by learned counsel for the petitioner. I find that prima-facie what the learned counsel for the petitioner contended seems to be correct. However, I am not expressing any final opinion in the matter as what I feel is that the matter has to be sent to the Secretary of the Department concerned, i.e. Panchayat & Rural Housing Development Department, for decision. In the judgments cited by the learned counsel for the petitioner, the State Government appears to be a party, but in this case the State Government has not been made a party. In the matter of claim of pension by the employees of Gram Panchayat or Panchayat etc., it is always advisable that the State Government is made a party so that a person may get effective relief. The petitioner was retired from the services on 31st May 1986 and though more than eleven years have now passed, he has not received any pension. This writ petition has been filed in the year 1986 but owing to heavy pendency of matters in this Court it could not reach for hearing for all these years.

#. Taking into consideration the totality of the facts of the case, interest of justice will be met in case this Special Civil Application is disposed of with directions to the Secretary, Panchayat & Rural Housing Development Department, Government of Gujarat, Sachivalaya, Gandhinagar, to decide the claim of the petitioner for pension from 1st June 1986. While deciding this question, the concerned Secretary shall take into consideration the decisions of this Court, reliance on which has been placed by learned counsel for the petitioner. The learned counsel for the petitioner is directed to send a copy of decisions of these two cases to the concerned Secretary. The petitioner shall file a representation in this respect to the concerned Secretary within a period of one month from the date of receipt of certified copy of this order and the concerned Secretary shall decide this matter within a period of two months next. In case the petitioner is found entitled for pension, the Secretary concerned shall see that the

petitioner is paid all the arrears of pension and ensure that he gets regular monthly pension. The arrears have to be paid to the petitioner within a period of two months next. Where the claim of the petitioner for pension is not acceptable, the concerned Secretary shall pass a reasoned order and send a copy of the same to the petitioner by registered post A.D. In case of difficulty, liberty is granted to the petitioner for revival of this Special Civil Application. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)